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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae are scientists and medical researchers who have been subjected to increasing criminal violence and continued harassment from extremists over the past two decades. Since 1987 *amici* and their colleagues have had their homes and cars firebombed, their research stolen and destroyed, and their lives and the lives of their family members threatened. The objective of these extremists is to force the *amici* to abandon their professional activities. The *amici* have devoted their professional lives to scientific and medical research, which often requires working with animals. As a group, the *amici* seek to advance medical and scientific research and provide the nation with better and more cost-effective health care.

The Animal Enterprise Terrorism Act of 2006 (AETA) provides an important tool for federal law enforcement authorities to prosecute those engaged in acts of animal rights terrorism or providing significant support to those who perpetrate them. Extremists have moved well beyond lawfully protected speech to unprotected acts of criminal violence, such as firebombing cars, flooding homes, stalking, and threatening. The AETA proscribes this form of conduct and therefore does not unconstitutionally violate the First Amendment rights of the Plaintiffs.

If the Plaintiffs are successful, substantial harm could easily result to medication and treatment development in the United States. *Amici* here seek to express their views as victims of such domestic terrorist acts, or as concerned colleagues who see such violence as jeopardizing the enterprise of medical research. The *amici* also provide an analysis of the historical context of the Constitutional guarantee of freedom of speech and various limitations imposed on this guarantee over time by Congress and the Courts because of the importance of the issue before this Court. They urge this Court to consider the Framers' intent and also urge the Plaintiffs to pursue the lawful means of advocacy available to them that is not proscribed by the AETA.

SUMMARY OF ARGUMENT

The AETA does not unconstitutionally violate the First Amendment because it targets unprotected terrorist conduct like the destruction of property and true threats of violence. AETA's purpose is to combat acts of terrorism targeted at individuals, including researchers like the *amici*, who dedicate their lives to the advancement of science and medicine. The Framers never intended Freedom of Speech to interfere with such a purpose and neither Congress nor the Supreme Court allow the First Amendment to protect terrorism. The AETA is not unconstitutional because it prohibits either unprotected conduct or true threats and the Plaintiffs have lawful and more effective means of advocacy at their disposal.

Congress enacted the AETA and its predecessor in response to very real and increasing acts of domestic terrorism often targeted at researchers like the *amici* here. The purpose of the legislation was to provide a federal enforcement tool against the reoccurring threats and violent activity perpetrated by certain organizations. The members of these organizations are fairly dubbed "terrorists" in part because of their underground nature and loosely-affiliated structure, but primarily because their *modus operandi* instills mass fear in the lives of innocent civilians. The extremists employ a broad spectrum of tactics to instill fear, ranging from the mailing of HIV-Infected razor blades to faculty at Harvard Medical School to firebombing the homes of neuroscientists at the University of California (Los Angeles). Their targets, including the *amici* here, are medical and scientific researchers that engage in animal studies because it is required by law and necessary for the betterment of humankind. In pursuit of these ends, they have weathered a storm of threats and violence that has swept the globe for over two decades.

While drawing the line between protected free speech necessary to a democratic society and unprotected illegal conduct has presented a challenge to our Nation from its very beginning,

the First Amendment has never been a shield for terrorism. Many of the Founding Fathers drew this line in such a way as to provide broad protection for individual liberty in order to promote a marketplace of ideas necessary for a democracy. During difficult times in our Nation's history, the Supreme Court tightened this protection in the interest of national security and allowed more "speech" to fall into the category of unprotected, illegal conduct. Contemporary American law is more aligned with the vision of the Framers and yet it rightfully denies protection for criminal conduct, advocating imminent unlawful behavior, and imposing true threats. Regardless of the precise location of this line, the First Amendment does not and must not protect terrorism.

The AETA on its face and as applied unquestionably targets domestic terrorism by prohibiting unlawful conduct and intimidation. The wording of the AETA consists primarily of two provisions, which targets the unprotected categories of criminal property damage and intimidation that places individuals in a reasonable fear of death or serious bodily injury, respectively. The Government has sparingly enforced the AETA by limiting its application to factual scenarios involving these two unprotected categories. Since the AETA primarily targets unlawful conduct and secondarily targets "true threats," a decision striking it down would allow Freedom of Speech to shield terrorism. Such a decision must not stand lest it remove a barricade necessary for researchers like the *amici* here to continue their tireless work advancing science and medicine and benefitting humankind. The better approach is to allow the AETA to stand rightfully on constitutional grounds and encourage activists like the Plaintiffs to pursue the presently available means of advocacy that are both lawful and effective.

INTRODUCTION

The AETA is not unconstitutional because it targets unprotected terrorist conduct. The purpose of the AETA is to combat acts of terrorism targeted at individuals, including researchers like the *amici*, who dedicate their lives to the advancement of science and medicine. Freedom of Speech was never intended to interfere with such a purpose and does not protect terrorism, acts of violence, the destructions of real or personal property, nor true threats and intimidation. The AETA is not unconstitutional because it prohibits these types of unprotected conduct and the Plaintiffs should pursue the lawful and effective means of advocacy at their disposal.

ARGUMENT

The Plaintiffs claim the AETA unconstitutionally violates their First Amendment rights. The Plaintiffs are wrong because the First Amendment does not protect terrorism.

I. Congress Enacted The AETA And Its Predecessor In Response To Increasing Acts Of Terrorism Targeted At Researches Like The *Amici*

Congress enacted the AETA and its predecessor in response to very real and increasing acts of domestic terrorism often targeted at researchers like the *amici* here. The purpose of the legislation was to provide a federal enforcement tool against the reoccurring threats and violent activity perpetrated by certain organizations. The members of these organizations are fairly dubbed “terrorists” in part because of their underground nature and loosely-affiliated structure, but primarily because their *modus operandi* instills mass fear in the lives of innocent civilians. Many of these civilians, like the *amici* here, are medical and scientific researchers that engage in animal studies because it is required by law and necessary for the betterment of humankind. In pursuit of these ends, they have weathered a storm of threats and violence that has swept the globe for the past two decades.

The purpose of the legislation was and is to provide a federal enforcement tool against the reoccurring threats and violent activity perpetrated by certain organizations. *See* 152 Cong. Rec. H8590, H8591-92 (daily ed. Nov. 13, 2006) (Rep. Scott) (Amendments to the legislation are in response to the rising incidents of violence and threats against individuals like the *Amici* here and the entities that employ them.); *id.* (The legislation addresses over one thousand incidents of violent attacks, threats, intimidation, and other illegal acts occurring in the past fifteen years.). These organizations include the Animal Liberation Front (“ALF”), Stop Huntington Animal Cruelty (“SHAC”), and the Environmental Liberation Front (“ELF”). *Id.*

These groups are fairly labeled “terrorists” in part because of their loosely-affiliated structure and underground nature. *See* FBI, TERRORISM IN THE UNITED STATES 1999 17 (1999) [hereinafter “FBI, TERROR REPORT 1999”]¹ (noting loosely affiliated extremists, whether domestic or international in nature, pose most urgent terrorist threat in US); *id.* at 30 (discussing rising concern of loosely affiliated animal rights and environmental extremists); *id.* at 23 (describing loose affiliations as primary category of international terrorism). There is even overlap between the environmental and animal rights extremists. *See, e.g.,* FBI, TERRORISM 2002-2005 3 (2d ed. 2005) [hereinafter “FBI, TERROR REPORT 2002-2005”]² (ELF and ALF jointly claim responsibility for arson attack and mink release). Also like international terrorists, they operate underground. *See, e.g., United States v. Fullmer*, 584 F.3d 132, 139-141 (3d Cir. 2009) (SHAC website posts anonymous illegal attacks and disclaims any engagement in illegal conduct); FBI, TERROR REPORT 1987-1999, at 3 (ALF website posts laboratory break-in and animal theft in great detail on same day as attack without claiming credit).

¹ http://www.fbi.gov/stats-services/publications/terror_99.pdf

² http://www.fbi.gov/stats-services/publications/terrorism-2002-2005/terror02_05.pdf

Yet they are fairly labeled “terrorists” primarily because they employ a broad spectrum of methods to instill fear in their targets that ranges from mailing HIV-infected razor blades to researchers at Harvard Medical School to firebombing the homes of UCLA scientists. *See* The Harvard University Gazette, *Eight Faculty Members Receive Mail Threats*, Oct. 28, 1999³ [hereinafter “Harvard Article”] (Razor blades were inserted into the inside back panels of white business-sized envelopes in order to inflict harm upon opening and mailed to Harvard faculty at Harvard Medical School and Beth Israel.); ADL, *Animal Rights Extremists Target the University of California*⁴ [hereinafter “ADL Article 2011”]; Andrew Blankstein and Greg Kirkorian, *Fire Set at UCLA Scientist’s House*, LOS ANGELES TIMES, Feb. 6, 2008, at B4.

A number of these attacks were directed at the *amici* here. For example, the ALF claimed responsibility for firebombing the home of Dr. Edythe London in February 2008 and for flooding it just three months earlier. *Id.* In May of last year animal rights extremists claimed to have sent letters containing a “dangerous present” to both Dr. London and J. David Jentsch. *See* ADL Article 2011; *see also* Michael Martinez, *Activist Group Claims to Send AIDS-Tainted Razors to Animal Researcher*, CNN, Nov. 24, 2010. Jentsch is no foreigner to these threats and attacks as extremists took credit for blowing up his car in 2009. *See* ADL Article 2011.

The effect of these attacks reaches beyond the *amici* as animal extremists intending to target *amici* often mistakenly attack unaffiliated bystanders. In August of 2006, for example, extremists firebombed the home of a 70 year-old woman when they thought it belonged to Dr. Lynn Fairbanks. *See* Rebecca Trounson and Joe Mozingo *UCLA to Protect Animal Research*,

³<http://news.harvard.edu/gazette/1999/10.28/threat.html>

⁴<http://www.adl.org/NR/exeres/FE4F2992-54B2-4E4E-84C5-4C6A9596A7DE,DB7611A2-02CD-43AF-8147-649E26813571,frameless.htm> (last visited March 8, 2012)

LOS ANGELES TIMES, Aug. 26, 2006.⁵ Similarly, animal extremists botched an attempt to target Dr. Lacan by firebombing a car at the wrong home. *See* Andrew Blankstein, *Arson Aimed at UCLA Scientist*, LOS ANGELES TIMES, Nov. 29, 2008.⁶ The attack ultimately caused damage to two additional vehicles, as well as the home of the unaffiliated bystander. *See id.*⁷

The extremists target the *amici* because they are members of medical and scientific communities engaging in animal research that is often required by law and necessary for the betterment of humankind. Laws in this country as well as abroad often require the testing of medical devices and pharmaceuticals for safety and efficacy on animals in the preclinical trial phase prior to moving toward the clinical trial phase involving human beings. *See, e.g., Fullmer* (noting the laws and regulations of the United States and Europe require animal testing to ensure safety and efficacy of pharmaceuticals, veterinary products, and medical implants). Many Nobel Prize-winning breakthroughs in science and medicine involved animal testing, including, *inter alia*, the discovery of penicillin, insulin, and the human papilloma virus. *See generally* MICHAEL P. CONN AND JAMES V. PARKER, *THE ANIMAL RESEARCH WAR* (2008); *see also* CARL COHEN AND TOM REGAN, 119-123 *THE ANIMAL RIGHTS DEBATE* (2001). Treatments for breast cancer and the human immunodeficiency virus have also benefitted from research with animals. *See ID.*

The *amici* here similarly seek to better humankind with their research. For example, much of Dr. London's research focuses on positive treatments in assisting human beings with overcoming drug addiction. *See, e.g.,* ED London et. al., *Cerebral Metabolic Dysfunction and Impaired Vigilance in Recently Abstinent Methamphetamine Abusers*, 58 *BIOLOGICAL*

⁵ <http://articles.latimes.com/2006/aug/26/local/me-ucla26>

⁶ <http://articles.latimes.com/2008/nov/29/local/me-animal-arson29>

⁷ Not unlike some of their attacks, these extremists are more often than not entirely misinformed regarding the information upon which they justify their conduct. *See, e.g.,* 6-7 MICHAEL P. CONN AND JAMES V. PARKER, *THE ANIMAL RESEARCH WAR* (2008) (One *amicus* describes how an extremist accused him of torturing Marmosets when he had never even seen a Marmoset).

PSYCHIATRY 763, 770-78 (2005). As another example, Dr. Rose was pivotal in pioneering the well-known “nicotine patch,” which has enabled millions of smokers to break their habit and has saved countless lives in recent years. *See, e.g.,* Jed E. Rose et. al., *Precessation Treatment With Nicotine Patch Significantly Increases Abstinence Rates Relative To Conventional Treatment*, 11 NICOTINE & TOBACCO RESEARCH 1021, 1067-1075 (2009). The *amici* remain committed to their goal of bettering humanity. Yet this commitment has not been without a cost.

What began as a movement in the United Kingdom 20 years ago has become a campaign of intimidation and violence by animal rights extremists in the United States. *See Fullmer*, at 138 (discussing quick rise of England SHAC movement in the early 1990’s and the assault of the Huntingdon COO by three masked individuals in front of his London home); FBI, TERROR REPORT 1987-1999, at 30 (first recorded US attack was a 1987 ALF arson in Davis, California). Plaintiff Gazzola was convicted for her role in some incidents, including coordinating and participating in a Seattle bombing and making specific threats of violence at a Huntingdon worker’s home. *Fullmer*, at 146-49.⁸ The incidents have occurred across the nation over the past two decades and have caused more than \$175 million in damage with single incidents totaling hundreds of thousands of dollars. *See* ADL Article 2011. They have been marked by

⁸Plaintiff Gazzola was videotaped threatening to burn down the individual’s home and warning that the police could not protect him or his family. *Id.* at 148. She stated: “Where were the police when [one individual’s] car got flipped over in his driveway? Where were the police when [another individual] had all his windows smashed in and his house covered in red paint in Chicago? And where were the police when your house was covered in red paint a few weeks ago? They can’t protect you. Your injunctions can’t stop us. *We’ll always find a way around whatever they throw at us.*” *Id.* at 146 (emphasis added). The Seattle smoke bombings were at the offices of Guy Carpenter and resulted in the building evacuation of over 700 people. *Id.* at 149. Guy Carpenter is a Marsh subsidiary, Huntingdon’s former insurer. *Id.* at 148. Other SHAC threats included e-mailing a Marsh employee *to ask her how she would feel if they cut up her son and filled him with poison.* *Id.* at 144.

acts of harassment, death threats, vandalism, and bombings deliberately targeting individuals, including the *amici* here, their colleagues, families, friends, and loved ones. *Id.*⁹

The Campaign Against the University of California: Presently and beginning in 2006, these groups operate largely against the University of California (UC) scientists and researchers in the medical areas utilizing animals for research in laboratories. University of California (UC) scientists involved in animal research, including individuals from UCLA, UC Berkeley, UC Davis, UC Irvine, UC San Francisco, UC San Diego, and UC Santa Cruz have been the targets of a widespread campaign of intimidation and violence by animal rights extremists. In addition to having their homes and cars vandalized and firebombed, they and their families have been harassed and received death threats.¹⁰ Incidents targeting the *amici* and others associated with the UC system include the following:

- On May 3, 2011, two animal rights extremist cells claimed that letters, each containing "a dangerous present," had been sent the previous week to *amici* Edythe London and J. David Jentsch, UCLA scientists. ADL Article 2011. The claim was jointly made by the "Justice Department" and the Animal Liberation Brigade (ALB). *Id.* The "Justice Department" is a group that mailed contaminated razor blades to animal researchers at other U.S. universities and injured several people using letter-bombs in the 1990s. *Id.* The ALB

⁹ While the brief for the Government and the institutional *amici* touch upon these acts, the *amici* here, who consist of the individuals whose very lives have been traumatized by these events, feel it is necessary to address the breadth and depth of these attacks in order to voice their perspective adequately. As such, a more expansive description of select attacks follows below.

¹⁰ The campaign against the University of California began several months after an animal rights conference held in Los Angeles – "Animal Rights 2005 National Conference" that featured representatives of the Primate Freedom Project (PFP) and Stop Huntingdon Animal Cruelty (SHAC), a radical animal rights group known for posting on its Web site the names, addresses, phone numbers and other personal information of people who work at companies doing business with its primary target, Huntingdon Life Sciences.

claimed responsibility for explosives at the offices of two companies tied to animal testing in 2003. *Id.* Both are offshoots of the Animal Liberation Front (ALF). *Id.*

- On November 22, 2010, the "Justice Department" claimed responsibility for sending razor blades to *amicus* David Jentsch, warning Jentsch, "*STOP YOUR SICK EXPERIMENTS OR HELL AWAITS YOU.*" *Id.*; see also Michael Martinez, *Activist Group Claims To Send AIDS-Tainted Razors To Animal Researcher*, CNN, Nov. 24, 2010 (generally discussing the attack). The group claimed that the razor blades were AIDS-tainted. *Id.* They also sent "rusty razor blades tainted with AIDS-infected blood" to a UCLA graduate student working with Jentsch, Stephanie Groman. *ADL Article 2011*. They then issued a second communiqué that week warning animal researchers more broadly, "*Mark our words, we will destroy all who fall into our focus.*" *Id.*
- March and July of 2009 were marked by an additional attack against *amicus* Jentsch, as well as one against *amicus* Selsted, respectively. The ALB took credit for using a homemade explosive device to blow up the car of *amicus* Jentsch outside his home on March 7, 2009. *Id.*¹¹ On July 10, 2009, UC Irvine pathologist Michael Selsted had his home and three vehicles vandalized with paint and paint stripper and the word "killer" spray-painted on his garage door. *Id.* The ALF claimed responsibility and stated in its communiqué: "We can only hope that one day someone will make you suffer as much as the animals in the laboratories you work in." *Id.*

¹¹ The statement included a message to the FBI, ostensibly in response to recent attempts by law enforcement agencies to crack down on animal rights extremists' criminal activity. *Id.* "The more legit activists you [expletive] with the more it inspires us since wer're [*sic*] the people whom you least suspect and when we hit we hit hard." *Id.*

- Extremists made two attacks against *amici* in November of 2008, including a misplaced car-bomb intended for Dr. Goran Lacan, a UCLA medical researcher. This car bomb destroyed two vehicles outside a woman's home on November 20th. *Id.* Students and Workers for the Liberation of UCLA Primates claimed responsibility for the attack in a communiqué. *Id.*¹² The ALF claimed responsibility for an attack on November 27th at a UCLA clinic that was vandalized with red paint and had its locks glued shut. The communiqué described the facility as an "outpost of the murderous UCLA medical department." *Id.*
- Several firebombs occurred in the summer of 2008. One of them exploded at night at the home of UC Santa Cruz (UCSC) molecular biologist Dr. David Feldheim and forced him and his family, who had been sleeping inside, to escape down a fire ladder. *Id.* Authorities described the bomb as a "Molotov cocktail on steroids." *Id.* Feldheim was one of 13 UCSC faculty targeted in a pamphlet listing their home addresses and photos¹³ with the warning: "Animal abusers everywhere beware; we know where you live; we know where you work; we will never back down until you end your abuse." *Id.* Another firebombing was of a UCLA commuter van on June 3 with the ALF claiming responsibility.¹⁴
- February of 2008 also included a firebombing at the home of an *amicus*, as well as other attacks against UCSC faculty. On February 3, 2008, a firebomb exploded and damaged the

¹² This group claimed responsibility for other acts in 2008, including vandalizing three cars in the Santa Monica driveway of a UCLA scientist and stealing three UCLA vans. *Id.* The Primate Freedom Project (PFP), a group with chapters around the U.S. that describes itself as "dedicated to ending the use of nonhuman primates in biomedical and harmful behavioral experimentation," has also had a key role in the campaign against the University of California. *Id.*

¹³ A second firebomb destroyed a vehicle owned by another UCSC animal researcher and a third received a threatening phone message at home the day of the firebombings. *See id.*

¹⁴ Since then, several other vans have been vandalized and stolen by the ALF and similar groups targeting UCLA. *Id.*

home of *amicus* Dr. Edythe London. *Id.*; see also Andrew Blankstein and Greg Kirkorian, *Fire Set at UCLA Scientist's House*, LOS ANGELES TIMES, Feb. 6, 2008, at B4. The ALF claimed responsibility for the act in a communiqué and also took credit for flooding London's home three months earlier. *ADL Article 2011*; see also Andy Guess, *Going on the Offensive Against Animal 'Liberationists,'* INSIDE HIGHER ED., Feb. 21, 2008.¹⁵ On February 24, 2008, six masked extremists attempted to enter the home of a UCSC scientist during her daughter's birthday party. *ADL Article 2011*. One of the intruders hit her husband with an unidentified object before running off with the rest of the group. *Id.*¹⁶

- On June 24, 2007, a bomb left under the car of Dr. Arthur Rosenbaum, the chief of pediatric ophthalmology at UCLA's Jules Stein Eye Institute. See Greg Miller, *Animal Extremists Get Personal*, 1829 *SCIENCE* 1856-58 (2007). The ALB claimed responsibility for the attempted firebombing in a communiqué which included the doctor's home address and warned: "you need to watch your back because next time you are in the operating room or walking to your office you just might be facing injections into your eyes like the primates, you sick twisted [expletive]." Patrick Range McDonald, *Monkey Madness at UCLA: Violent Radicals Aim To Kill Jules Stein Eye Institute Researchers Who Test On Animals*, LA WEEKLY, Aug. 09, 2007.¹⁷

¹⁵<http://www.insidehighered.com/news/2008/02/21/ucla>. In its communiqué at that time the ALF threatened to return: "It would have been just as easy to burn your house down Edythe. As you slosh around your flooded house consider yourself fortunate this time." *Id.* The ALF has also threatened London and her family and claimed responsibility for sending "blood and rat poisoned covered razor blades" to her home and planted a fake bomb in the law offices of her husband. See *id.* (discussing, *inter alia*, the razor blade mailing attack on Dr. London).

¹⁶ In March 2009 four individuals were arrested in connection to the incident, and these suspects are also accused of harassing and intimidating UC Berkeley researchers during demonstrations in front of their homes in October 2007 and January 2008. *Id.*

¹⁷ The communiqué also warned that activists know that "just demonstrating won't stop this kind of evil." *ADL Article 2011*. Later, Rosenbaum's wife received a letter with razor blades stating,

- On June 30, 2006, a bomb intended for *amicus* Dr. Lynn Fairbanks, was mistakenly left outside a neighbor's home. *See id.* The ALF claimed responsibility for the attempted attack in a communiqué, stating that they had placed a "Molotov cocktail" on Fairbanks' doorstep because of her involvement in animal experimentation. *Id.* A PFP spokesperson said that Dr. Fairbanks "is riding a gravy train to personal gain, nothing else, and I hope the ALF stops her in her tracks." *Id.* In addition to posting Fairbanks' address and photo on its Web site prior to the incident, the PFP site had featured a flyer intended for "distribution in her neighborhood." *Id.*
- Animal rights terrorism in the Los Angeles area in recent years extends beyond the UCLA. *Id.* For example, the ALF claimed responsibility for acts of harassment and vandalism aimed at Los Angeles Mayor Antonio Villaraigosa and Deputy Mayor Jimmy Blackman, as well as their families. *Id.* They claimed responsibility for vandalizing the home of Deborah Villar, the sister of Mayor Villaraigosa. *Id.* Their communiqué issued on the attack listed Los Angeles Animal Services as the target, citing the mayor's refusal "to hire a new manager to stop the carnage of animals in our city." *Id.* It warned the Mayor and his family: "next time we throw bottles, they'll be filled with gasoline." *Id.* The ALF also claimed responsibility for vandalizing Villar's home, as well as the homes of Blackman and his parents. *Id.*

Other Attacks Across the United States: The deliberate targeting of university scientists involved in animal research is not a new phenomenon, nor is it limited to California. *Id.* For example, a group calling itself Tucson H.A.A.N.D. ("Hooligans Attack at Night, Duh") vandalized the home of Katalin Gothard, a scientist at the University of Arizona's College of

"If your husband can't stop himself from his obsession to torture monkeys maybe you can. If not then tell him that we will do exactly what he does to monkeys to you." *Id.*

Medicine, on February 20, 2009. *Id.* Similarly, researchers at Wake Forest University in North Carolina, *amici* herein, were also targeted in February 2009. *Id.*¹⁸ A sampling of other campuses targeted by animal rights extremists, who have carried out acts of vandalism, animal release, arson and other types of property destruction, includes:

- Johns Hopkins University (JHU), December 2008: The ALB claimed responsibility for "special letter bombs" sent to researchers. They accused JHU of being one of the "top violators of the Animal Welfare Act" and promised that "[a]ll responsible for the torture and oppression of innocent beings will soon receive the same treatment." *See id.*; *see also* William E. Dyson, *TERRORISM: AN INVESTIGATOR'S HANDBOOK* 467 (4th ed. 2012).
- Oregon Health & Science University (OHSU), December 2007: The ALF claimed responsibility for vandalizing a researcher's cars outside his home for his primate reproductive work, warning "blatant disregard for the earth, animals and it's [sic] resources shall not go unseen by the ever-watching eyes of the ALF." ADL Article 2011.
- University of Utah, April 2007: The ALF claimed responsibility for vandalizing a neurobiology professor's home in Riverton, causing thousands of dollars in damage by breaking windows, gluing locks shut, and destroying his lawn. *Id.* They targeted this scientist on other occasions, including in January 2007 when they vandalized his house and used acid to destroy windows. Their communiqué warned "we will be back repeatedly to destroy your property until animals no longer die for your blood money. *Id.* Until you leave the torture business we'll continue to turn your life upside down." *Id.*

¹⁸ In a communiqué the "Justice Department" claimed responsibility for mailing razor blades covered in rat poison to two scientists there and warned, "This is only the start – end the experiments on the primate captives or it only gets worse." *Id.* The "Justice Department," an offshoot of Animal Liberation Front (ALF), the most active extreme animal rights movement in the country, injured several people using letter-bombs in the 1990s. *Id.*

- Louisiana State University (LSU), April 2005: The ALF claimed responsibility for breaking into a biology lab. They released caged mice, glued locks shut, broke windows and aquarium glass, and spray-painted ALF slogans on walls. *Id.* They also claimed responsibility for a September 2003 break-in at LSU's School of Veterinary Medicine, which resulted in hundreds of thousands of dollars in damage. *Id.*
- University of Iowa, November 2004: The ALF took credit for pouring acid on documents, destroying computers, and removing over 400 animals. *Id.* They described it as "a methodical effort to cripple the UI psychology department's animal research." *Id.*
- Brigham Young University (BYU), July 2004: Fires burned two tractors and more than 3,000 pounds of cardboard at a building on the campus in Provo, Utah. *See* FBI, TERROR REPORT 2002-2005, at 16. The incident accompanied vandalism that included spray painting campus buildings with "ALF," "war is on," "you guys are the terrorists," and "this will never end." *Id.* Damage estimates were \$75, 000. *Id.* The incident followed prior vandalism in May. *Id.* Harrison Burrows and Joshua Demmitt confessed to these incidents and were sentenced on January 15, 2005. *Id.* In March of 2005, Jason Hall was charged with a misdemeanor for his alleged role in the fires. The Salt Lake Tribune, *For The Record: Public Safety News From Tribune Staff And Wire Reports*, Mar. 26, 2005.¹⁹
- University of Minnesota, April 1999: Twelve research laboratories were broken into and vandalized and research animals were stolen, resulting in monetary damages of over \$2 million. FBI, TERROR REPORT 1987-1999, at 3. On the same day the ALF web page specified the break-ins in exact detail, including the number and species of animals stolen, the buildings and floors of the laboratories, and the vandalism. *Id.*

¹⁹ http://www.sltrib.com/utah/ci_2623089.

- Harvard University, October 1999: Eight faculty members of Harvard University received threatening letters with razor blades at their places of work, including Harvard Medical School and Beth Israel. The Harvard University Gazette, *Eight Faculty Members Receive Mail Threats*, Oct. 28, 1999²⁰ [hereinafter "Harvard Article"]. The razor blades were inserted into the inside back panels of white business-sized envelopes in order to inflict harm to anyone opening them by hand. *Id.* One such letter read, "You have until autumn 2000 to release all your primate captives and get out of the vivisection industry. ADL Article 2011. If you do not heed our warning, your violence will be turned back upon you." *Id.* The "Justice Department" claimed responsibility for the mailing, which was part of an intended act of violence in which 80 researchers at different universities received threatening letters booby-trapped with razor blades. *Id.*; *see also* Harvard Article.
- Cornell University, October 1997: Members of Band of the Mercy (BOM), an earlier incarnation of ALF, destroyed files, ruined blood samples, confiscated paperwork and released cows at the Animal Teaching and Research Unit. ADL Article 2011.
- Michigan State University (MSU), 1992: A firebombing of an animal research laboratory at MSU destroyed years of research and caused \$2.5 million in damages. *ADL Article 2011*. An animal rights spokesperson who was also involved in the incident served over three years in prison for aiding and abetting arson. *Id.*
- University of Arizona, April 1989: The ALF claimed responsibility for breaking into university research labs, where they set two fires and released more than 1,100 laboratory animals, causing an estimated \$100,000 in damage. *Id.*

²⁰ <http://news.harvard.edu/gazette/1999/10.28/threat.html>

II. Freedom of Speech Has Never Been Unbridled And Has Never Protected Terrorism

While drawing the line between protected free speech necessary to a democratic society and unprotected illegal conduct has challenged our Nation since its inception, the First Amendment has never been a shield for terrorism. Many of the Founding Fathers drew this line in such a way as to provide broader protection for an individual's liberty. At times, the Supreme Court tightened this protection in the interest of national security by allowing more "speech" to fall into the category of illegal conduct. Contemporary American law is more in line with the Framers' intent and yet it rightfully continues to deny protection for advocating unlawful behavior and for imposing true threats. Irrespective of the precise location of this line, the First Amendment does not and must not protect terrorism.

Many of the Founding Fathers envisioned broad protection for free speech in order to generate the marketplace of ideas necessary for democracy; yet even then Freedom of Speech did not protect violence, threats or property damage. Free speech pre-dates the Constitution and was arguably born in the colony of New York with the 1735 trial of John Peter Zenger.²¹ At the time of its drafting, neither Alexander Hamilton nor James Madison envisioned a need for the first Amendment because they were of the opinion that the Constitution did not delegate governmental power to infringe upon these individual liberties. *See* JAMES MADISON, 6 THE WRITINGS OF JAMES MADISON 385-401 (Gaillard Hunt ed. 1900-1910); Alexander Hamilton, *Federalist No. 84*, reprinted in 4 THE PAPERS OF ALEXANDER HAMILTON 706 (Harold Syrett ed.

²¹Zenger was arrested and tried on criminal charges for seditious libel and found not guilty, establishing the beginning of public opposition to trials of seditious libel. *See generally* PAUL FINKELMAN, A BRIEF NARRATIVE OF THE CASE AND TRYAL OF JOHN PETER ZENGER (2010). Nevertheless, the Supreme Court never ruled on the Constitutionality of the Sedition Act before its speech provisions expired in 1801, only commenting on it retrospectively in *dicta*. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 276 (1964) ("Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history."). The repatriations paid for convictions under the Act therefore brought the importance of the First Amendment to light. *Id.*

1962); Paul Finkelman, *James Madison and the Bill of Rights: A Reluctant Paternity*, 1990 SUPREME COURT REVIEW 301-47 (1990) (generally discussing Madison's ambivalence to the bill of rights).²² While the Sedition Act was ultimately viewed in poor light, the speech it punished was verbal and written, not "symbolic," and did not involve violent conduct or true threats to personal safety. *New York Times Co.* at 276.

At times, the Supreme Court narrowed this protection by allowing more speech to fall into the category of illegal conduct. The Court implemented the "clear and present danger" requirement, *see Schenck v. United States*, 249 U.S. 47, 50-51 (1919) (upholding conviction under the Espionage Act of 1917 for passing out pamphlets on draft opposition), and expanded it to allow governmental restraints on speech that had a "natural tendency and probable effect" to generate illegal conduct. *See Debs v. United States*, 249 U.S. 211, 216 (1919) (upholding Espionage Act conviction of presidential candidate speech opposing WWI). The Court further tightened protection by upholding a criminal statute proscribing speech advocating government overthrow. *See Gitlow v. New York*, 268 U.S. 652, 669 (1925) (reasoning these utterances ". . . present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion."); *see also Dennis v. United States*, 341 U.S. 494, 510 (1951) ("In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as necessary to avoid the danger."). The Court did not protect speech with an attenuated connection to unlawful behavior even without a true threat of violence.

Contemporary American law is more in line with the Framers' intent, but Freedom of Speech is not unbridled and certain unprotected categories remain. Freedom of Speech does not

²²Post-ratification, however, Madison pushed for the Bill of Rights and was willing to concede "that in a certain form and to a certain extent, such a provision was neither improper nor altogether useless." 1 Annals of Congress, 1st Cong., 1st Sess., 453; *see also* Finkelman, *James Madison and the Bill of Rights*, at 340-42.

cover criminal acts including arson, assault, destruction of property, and trespass. *See, e.g., Virginia v. Hicks*, 539 U.S. 113 (2003) (no First Amendment protection for trespass); *Virginia v. Black*, 538 U.S. 343, 394 (2003) (Thomas, J., dissenting) (“[O]ne cannot burn down someone’s house to make a political point and then seek refuge in the First Amendment . . .”).

Though the Court expanded Freedom of Speech to protect abstract discussions of using unlawful behavior, *contra Schenck, Debs, and Gitlow, supra*, the incitement of imminent unlawful conduct remains unprotected. *Brandenburg v. Ohio*, 395 U.S. 444, 447-48 (1969) (per curiam). Threats and intimidation are not protected, regardless of whether they involve political rhetoric. *See Virginia v. Black*, 538 U.S. 343, 360 (2003) (A “true threat” is unprotected and includes intimidation “where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”); *see also United States v. Fulmer*, 108 F.3d 1486, 1491 (1st Cir. 1997) (adopting reasonably foreseeable standard to uphold conviction of a true threat); *United States v. Viehhaus*, 168 F.3d 392, 396 (10th Cir. 1999) (bomb threats cross threshold of political rhetoric to criminal threat and “[t]he fact that a specific threat accompanies pure political speech does not shield a defendant from culpability”); *cf. United States v. Bellrichard*, 994 F.2d 1318, 1322 (8th Cir. 1993) (affirming liability for “guilty posters” disclosing names and addresses of abortion doctors and noting one “may not escape prosecution for uttering threatening language merely by combining [it] with issues of public concern”).

Many Federal statutes exist for the purposes of combating terrorism. Following the terrorist attacks of September 11, 2001 (“9/11”) Congress acted quickly to provide additional law enforcement tools to keep the nation safe with the Patriot Act.²³ The Act made significant

²³ The Act passed the House (H.R. 2975) as the Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 on October 12, 2001, and by the Senate as the Uniting and Strengthening America (USA) Act (S. 1510) on October 11, 2001. On October 17,

amendments to over 15 federal statutes and increased the investigative powers of U.S. law enforcement agencies. While the USA PATRIOT Act has been somewhat controversial, Congress has not passed any of the bills proposed to amend it.²⁴

III. The AETA Is Constitutional Because It Prosecutes Terrorism And The Plaintiffs Have Means Of Advocacy At Their Disposal That Are Both Effective And Lawful

The statutory wording of the AETA and its enforcement are unquestionably aimed at domestic terrorism. The AETA is a prosecutorial tool for fighting acts of terrorism and its wording targets the unprotected categories of criminal property damage and intimidation. The Government has sparingly enforced the AETA by limiting its application to unprotected categories. Since the AETA primarily targets conduct and secondarily targets unprotected “true threats,” a decision striking it down would allow Freedom of Speech to shield terrorism.

2001 the Financial Anti-Terrorism Act passed the House of Representatives. The USA Act and the Financial Anti-Terrorism Act were combined to become the USA PATRIOT Act and signed into law by President Bush on October 26, 2001. In actuality, this Act updated a number of statutes already in effect. 18 U.S.C. §§ 2331 and 2333-2338 were enacted in 1990 as the Antiterrorism Act of 1990, Pub. L. No. 101-519, § 132, 104 Stat. 2240, 2250, but were repealed and subsequently re-enacted as part of the Federal Courts Administration Act of 1992, Pub. L. No. 102-572, 106 Stat. 4506 (1992). 18 U.S.C. § 2339B was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. 104-132, § 303(a), 110 Stat. 1214, 1250, and was amended by, *inter alia*, the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), Pub. L. 108-458, § 6603, 118 Stat. 3638, 3762-3764. 18 U.S.C. § 2339C was enacted in 2002 as part of an act to implement the international Anti-Terrorist Conventions, including the International Convention of the Suppression of the Financing of Terrorism, Pub. L. 107-197, § 202(a), 116 Stat. 721, 724. *See*, Abraham Wagner, *Presidential Power in an Age of Terror*, SALTZMAN WORKING PAPER No. 14, Arnold A. Saltzman Institute of War and Peace Studies, Columbia University (June 2010). The most significant of the amended provisions relating to electronic surveillance are presently before the Ninth Circuit where a number of cases have been consolidated. *See In Re: National Security Agency Telecommunications Records Litigation*, No. M:06-cv-1791 (C.D. CA 2006); *Amnesty v. Blair*, No. 09-4112 (2d Cir. 2011).

²⁴These bills include the Protecting the Rights of Individuals Act, the Benjamin Franklin True Patriot Act, and the Security and Freedom Ensured Act (SAFE), none of which were passed by Congress. Federal court challenges to various provisions of the Act have been brought on constitutional grounds but as yet none have reached the Supreme Court.

The AETA fights terrorism and it effectively contains two provisions that respectively proscribe unprotected illegal conduct and threats. The first provision proscribes intentionally damaging or causing the loss of the real or personal property of an animal enterprise or connected persons or entities. 18 USC § 43(a)(2)(A). Such a provision cannot receive First Amendment protection because intentionally damaging the real or personal property of another is, by its very nature, illegal conduct and not speech. *See, e.g.*, M.G.L. c. 226 § 127 (Massachusetts makes the malicious or wanton destruction of real or personal property a felony).

The second prong proscribes intentionally threatening certain individuals by placing them in “reasonable fear of death” or “serious bodily harm.” 18 USC § 43(a)(2)(B). This wording almost identically tracks the wording in *Virginia v. Black*, which declines to protect speech intentionally made to instill “fear of bodily harm or death.” At 1548-49. If anything, the statute proscribes conduct that is even less likely to receive protection because it requires the “bodily harm” to be “serious.” § 43(a)(2)(B). It also makes room for the reasonableness standard adopted in this Circuit for unprotected “true threats.” *Fulmer*, 108 F.3d at 1491.²⁵ Such fear “reasonably” results from death threats associated with firebombs directed at their recipients.

The AETA is enforced sparingly and only involves fact patterns that include unprotected illegal conduct and true threats. While Plaintiff’s Complaint discusses the dismissal of *United States v. Buddenberg*, *see* Compl. ¶¶ 59-62 (citing 2010 U.S. Dist. LEXIS 78201 (N.D. Ca. July

²⁵Since the *amici* here feel the briefs for the Government and for the institutional *amici* substantially cover the defenses to Plaintiffs’ over-breadth and vagueness arguments, they do not repeat them here in order to avoid redundancy. *See* Def. Br. pp. 16-26; Inst. *Amici* Br. pp. 8-18. They would, however, like to add one simple point from the perspective of the victims: Whatever the “breadth” or “vagueness” of the wording simply matches the breadth and amorphous nature of the attacks and threats, which range from fire bombs to floods and from death threats on the phone to e-mails threatening to cut up and poison children. *See* Part I, *supra*. If Congress had specifically enumerated the types of attacks, these extremists could simply evade prosecution by generating new and innovative ways to damage property and instill fear into the lives of the *amici*.

12, 2010), it neglects to mention that the dismissal was for a lack of specificity in the indictment, which merely recited the elements of the statute, and that any discussion of “breadth” that the court entertained related only to this lack of factual allegations. *Buddenberg* at 24-25. Plaintiffs’ Complaint further neglects to mention that the same judge had previously denied the criminal defendants’ motion to dismiss, which argued the constitutional theories identical to those that the Plaintiffs raise here, *see* 2009 WL 3485937 (N.D. Cal. Oct. 28, 2009), and that the FBI investigation leading to the charges were based on unprotected criminal conduct including, forced entry, assault, destruction of property, and death threats. FBI, *Press Statement: Four Extremists Arrested For Threats and Violence Against UC Researchers* (Feb. 20, 2009) (describing the allegations leading to the arrests).²⁶

A number of lawful means of advocacy have proven themselves to be effective and have a less detrimental impact on the fields of medical and scientific research. For example, Congress has passed and frequently amended the Animal Welfare Protection Act, which sets standards for the treatment of animals intended for research and provides enforcement authority to the Animal and Plant Health Inspection Service. *See generally* 7 U.S.C. 2131 *et seq.* (enacted in 1960 and amended typically to broaden coverage in 1970, 1976, 1985, 1990, 2002, and 2008).²⁷ The FDA

²⁶ <http://www.state.gov/m/ds/rls/119478.htm>. Plaintiff’s Complaint also paints an erroneous description of the prosecution under the AEPA by broad brushing what it describes as a “myriad of legal and *illegal* conduct” and lumping together what the SHAC-7 defendants were and were not charged for in *Fullmer*. Comp. ¶¶ 54-58; *contra* 584 F.3d at 138-142 (describing, inter alia, destruction of property, trespass at individual’s homes, cyber attacks causing company system shut-downs totaling \$4000,000 in damage, death threats, and bombings). The SHAC-7 case also involved the inter-state stalking statute. *Id.* The factual details of this case, including Plaintiff Gazzola’s role in a bombing and death threats, are discussed in Part I, *supra*. Nevertheless, Plaintiff’s discussion of the AEPA is moot because it has been superseded by the AETA.

²⁷ Activists lawfully lobby Congress to pass additional bills and Congress has favorably responded in recent years by passing the Animal Fighting Prohibition Enforcement Act of 2007, P.L. 110-22 (signed into law May 3, 2007), introducing The Pet Safety and Protection Act of 2009 (H.R. 3907/S. 1834) in the 110th Congress and reintroducing the bill as the Puppy Uniform

has also implemented best practices through the Code of Federal Regulations’ “Good Laboratory Practice For Nonclinical Laboratory Studies.” *See* 21 CFR § 54 *et seq.*

Lawful advocacy also promotes personal accountability among researchers and scientists and, unlike terrorism, does not entail a negative effect on scientific and medical research. Many researchers and their employing organizations make a good faith effort to minimize the detrimental affect research has on animals by seeking out accreditation from the Association for Assessment and Accreditation of Laboratory Animal Care International and implementing their best practices. *See generally* National research Council, *Guide for The Care And Use Of Laboratory Animals* (8th Ed. 2011).²⁸ Unlawful advocacy, especially in the form of threats and property destruction proscribed by the AETA, however, has a detrimental effect on research and could easily cause some of our Nation’s best minds to leave the field. *See* Part I, *supra*.²⁹

Plaintiffs seem to be painfully aware that lawful remedies are available to them. Plaintiff Lehr, for example, avers that she has successfully lobbied for a municipal code in Montgomery County that forbade the giving away of bunnies and also that she currently distributes educational materials on-line. Comp. ¶¶ 121-22. Plaintiff Johnson engages in public education by showing film screenings of animal rights related videos. ¶ 159. Plaintiff Shapiro engages in animal rights activism, including public speaking and campaign work. ¶ 111. Plaintiffs can (and do) easily engage in a host of lawful forms of advocacy that do not implicate the AETA because they do not constitute terrorism.

Protection and Safety Act (H.R. 5434/S. 3424 in the 111th Congress).

²⁸ <http://grants.nih.gov/grants/olaw/Guide-for-the-care-and-use-of-Laboratory-animals.pdf>

²⁹ Of additional note is the fact that the ACLU did not oppose the bill, but only suggested minor changes. American Civil Liberties Union (ACLU) letter to Hon. James Sensenbrenner, Chairman, House Judiciary Committee and Hon. John Conyers, Ranking Member, House Judiciary Committee, *Re: ACLU Urges Needed Minor Changes to AETA, But Does Not Oppose Bill (S. 3880, the “Animal Enterprise Terrorism Act,”* October 30, 2006. The final version of the bill did not incorporate these minor changes suggested by the ACLU.

Naturally, then, Plaintiffs' Complaint begs a number of questions. Given Plaintiff Johnson's involvement in showing film screenings, ¶ 159, for example, the Complaint begs the question why Plaintiff Shapiro would fear prosecution for the same conduct. ¶ 114. As a whole, the Complaint begs the question as to why the Plaintiffs desire to strike down a statue, which, by its plain meaning, penalizes unlawful conduct and threats, when they are not being prosecuted and only intend to engage in lawful advocacy. Perhaps Plaintiffs' self-professed engagements in other forms of "advocacy" already answer this question. *See, e.g.*, ¶¶ 79, 81, 105, 136, 147, 155.

CONCLUSION

The AETA is not unconstitutional because it prohibits illegal conduct and true threats or intimidation. To hold otherwise is to remove a shield that barricades extremists from threatening and violently attacking researchers like the *amici* here, as well as their colleagues, friends, children, and loved ones. Whatever "fear" the plaintiffs purportedly possess regarding the chance of being susceptible to AETA prosecution for engaging in lawful conduct is certainly far less rationale and far outweighed by the fear that the *amici* have felt at the hands of extremists and do feel at the prospect of living in a Nation without the AETA.

For the reasons stated herein, the *amici* respectfully request that this Court grant the Government's motion and dismiss the Complaint with prejudice.

Dated: March 19, 2012

RESPECTFULLY SUBMITTED,

/s/ Abraham R. Wagner

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CERTIFICATE OF SERVICE

I certify that on this day I caused a true copy of the above document filed through the CM/ECF system to be sent electronically to the registered participants as identified on the NEF and that paper copies will be sent to those indicated as non-registered participants on the date indicated below.

Date: March 19, 2012 /s/ Brian D. Tobin

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